



22 CFR Part 121

[Public Notice: 11481]

RIN 1400-AF35

International Traffic in Arms Regulations (ITAR): Continued Temporary Modification of Category XI of the United States Munitions List

AGENCY: Department of State.

ACTION: Final rule; notification of temporary modification.

SUMMARY: The Department of State, pursuant to its regulations and in the interest of the security of the United States, temporarily modifies Category XI of the United States Munitions List (USML).

DATES: This rule is effective August 30, 2021, except for amendatory instruction 3, which is effective August 30, 2026.

FOR FURTHER INFORMATION CONTACT: Chris Weil, Technology and Jurisdiction Analysis Division, Office of Defense Trade Controls Policy, Department of State, (202) 632-2870, DDTCPublicComments@state.gov. ATTN: ITAR Amendment – USML Category XI(b) (1400-AE88)

SUPPLEMENTARY INFORMATION: On July 1, 2014, the Department published a final rule revising Category XI of the USML, 79 FR 37536, effective December 30, 2014. That final rule, consistent with the two prior proposed rules for USML Category XI (78 FR 45018, July 25, 2013 and 77 FR 70958, November 28, 2012), revised paragraph (b) of Category XI to clarify the extent of control and maintain the existing scope of control on items described in paragraph (b) and the directly related software described in paragraph (d).

The Department later determined that exporters may read the revised control language to exclude certain intelligence-analytics software that has been and remains controlled on the USML. Therefore, the Department determined that it was in the interest of the security of the

United States to temporarily revise USML Category XI paragraph (b), pursuant to the provisions of 22 CFR 126.2, while a long-term solution was developed. The Department published a final rule on July 2, 2015 (80 FR 37974) that temporarily modified USML Category XI(b) until December 29, 2015. The Department subsequently published a series of rules¹ that had the effect of continuing the modification until August 30, 2021.

The scope of control in existence prior to December 30, 2014 for USML Category XI paragraph (b) and directly related software in paragraph (d) remains in effect. This clarification is achieved by reinserting the words “analyze and produce information from” and by adding software to the description of items controlled. The Department, with its interagency partners, continues to develop a long-term solution for USML Category XI(b). However, that solution will not be in place when the current temporary modification expires on August 30, 2021. Therefore, the Department has determined, for the national security and foreign policy of the United States and in the best interest of the U.S. defense industry, to publish a final rule that extends the temporary modification of USML XI(b) for five years, to August 30, 2026, to allow it to be revised as part of the wholesale revision of USML Category XI.

Regulatory Findings

Administrative Procedure Act

This rulemaking is exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(1) as a military or foreign affairs function of the U.S. Government.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

¹ 80 FR 78130, 82 FR 41172, 83 FR 44228 and 84 FR 45652.

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

The Department does not believe this rulemaking is a major rule under the criteria of 5 U.S.C. 804.

Executive Orders 12372 and 13132

This rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking is a significant but not an economically significant rule, under the criteria of Executive Order 12866, and is consistent with the provisions of Executive Order 13563.

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 121

Arms and munitions, Classified information, Exports

For reasons stated in the preamble, the State Department amends 22 CFR part 121 as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; Pub. L. 105-261, 112 Stat. 1920; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.

2. In § 121.1, under Category XI, revise paragraph (b) to read as follows:

§ 121.1 The United States Munitions List.

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Category XI—Military Electronics

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*(b) Electronic systems, equipment or software, not elsewhere enumerated in this subchapter, specially designed for intelligence purposes that collect, survey, monitor, or exploit, or analyze and produce information from, the electromagnetic spectrum (regardless of transmission medium), or for counteracting such activities.

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3. Effective August 30, 2026, in § 121.1, under Category XI, revise paragraph (b) to read as follows:

§ 121.1 The United States Munitions List.

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Category XI—Military Electronics

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*(b) Electronic systems or equipment, not elsewhere enumerated in this subchapter, specially designed for intelligence purposes that collect, survey, monitor, or exploit the electromagnetic spectrum (regardless of transmission medium), or for counteracting such activities.

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Zachary A. Parker,
Director,
Office of Directives Management,
U.S. Department of State.

Billing Code 4710-25

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